

## DEPARTMENT OF TOURISM

The 30th August, 1974

No. 11709-6PP-74/28001.—Whereas the Governor of Haryana is satisfied that the land specified below is needed by the Government at public expense, for a public purpose, namely for the construction of staff quarters in the Village Uchana Tehsil and District Karnal for which notification No. 7155-6PP-72/1394, dated 10th January, 1973, under section 4 of the Land Acquisition Act, 1894, has been published, it is hereby declared that the land described in the specification below is required for the above purpose.

This declaration is made under the provisions of section 6 of the Land Acquisition Act, 1894, to all whom it may concern.

Plans of the land may be inspected in the offices of the Sub Divisional Officer-(C)-cum Land Acquisition Collector, Karnal and the Director Tourism, Haryana, Chandigarh.

## SPECIFICATION

District	Tehsil	Village and Haddast	Total Area	Khasra No.
Karnal	Karnal	Uchana/60	K.M. 11.3	12 2/2 3/1 8/2 9 10

KIRAN AGGARWAL Joint Secy.

## LABOUR DEPARTMENT

The 3rd September, 1974

No. 7694-4Lab-74/28286.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Dalmia Dadri Cement Ltd, Charkhi Dadri:

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 189 of 1971

SHRI SURESH CHANDER AND THE MANAGEMENT OF M/S DALMIA DADRI  
CEMENT LTD, CHARKHI DADRI

Present :—

Shri Sagar Ram Gupta, for the workman.

Shri Hemeshwar Dayal for the management.

## AWARD

Shri Suresh Chander workman concerned was in the service of M S Dalmia Dadri Cement Ltd., Charkhi Dadri as a Laboratory Tester since the 20th November, 1957. He was taken ill on the 14th November, 1970 and applied for sick leave upto 25th November, 1970 which was sanctioned by the management. According to him he did not recover from his illness inspite of treatment and his condition rather became worse. After the expiry of his leave originally applied for upto the 25th November, 1970 he sent his younger brother Shri Vijay Kumar to inform the Laboratory Incharge about his illness which he did in the presence of the other Laboratory Tester Shri Ram Chander. He also informed Shri Pat Ram, Head time keeper, now Establishment Incharge (W.W.1) about it. He continued to be ill till the 29th January, 1971 and sent letters to the management accompanied by the E.S.I. certificates. When the Doctor Incharge declared him fit to join his duty, he reported for duty in the Laboratory on the 30th January, 1971 and produced the fitness certificate but he was not taken on duty and was informed that his name had been struck off the rolls due to his long absence from duty without proper authorisation.

Feeling aggrieved, he gave the demand notice on 9th February, 1971 contending that the termination of his services by the management ignoring the fiction of his continuous illness was illegal and he was entitled to reinstatement with back wages. In the conciliation proceedings which were initiated on this demand notice, the management took up the plea that it was a case of loss of lien on the post held by Shri Suresh Chander who had failed to report for duty on the expiry of the leave granted to him as per the standing orders of the Company and in the circumstances there was no question of his services having been terminated by the management which, in fact, automatically stood terminated by his own conduct.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, referred the dispute for adjudication to this court, in exercise of the powers conferred by clause (c) of sub section (i) of Section 10 of the Industrial Disputes Act, 1947, —vide order No. ID/KNL/1-F-71/32511-15, dated 5th November, 1971, with the following term of reference.

"Whether the termination of services of Shri Suresh Chander was justified and in order? If not, to what relief is he entitled?"

The parties were called upon to put in their respective pleadings. Shri Suresh Chander reiterated his claim for re-instatement and payment of back wages as earlier raised through the demand notice leading to the present reference. The management contested his claim mainly on the ground that his leave expired on 25th November, 1970 and since he failed to return and report for duty within 8 days of the expiry of the period of leave granted to him, he had lost his lien on his appointment under clause 9(3) of the standing orders of the Company. In other words, there was automatic termination of his services by operation of the said clause of the standing orders without any action on the part of the management and as such no industrial dispute existed between the parties and the reference was invalid.

From the pleadings of the parties the following issues arose for determination in the case.

1. Whether there was an automatic loss of lien of the services of the applicant under clause 9 (3) of the Certified standing Orders and for this reason the case is not covered under section 2-A of the Industrial Disputes Act and the reference is invalid?
2. Whether the applicant was ill during the period he remained absent and if so, what is its effect?

The workman concerned has examined as many as seven witnesses including S/shri Pat Ram, Establishment Incharge of the Company W.W. 1, Vijay Kumar real brother of the workman W.W. 2, Ram Chander another Laboratory Tester of the Company W.W. 3, Binwari Lal, Peon of the Time officer W.W. 4, Dr. S. K. Chaudhry the then Medical officer, Civil Hospital, Charkhi Dadri and Incharge of the E. S. I. Dispensary W.W. 5, Ashok Kashayap Handwriting and Finger prints Expert, Delhi W.W. 6 and Bhim Sain, President, Dalmia Dadri Cement Factory Men's Union, Charkhi Dadri W.W.7, besides himself coming into the witness-box as W.W. 8.

The documentary evidence relied upon by the workman consists of the E.S.I. slips Exhibit W. 1 to W. 10, letters written by him to the management Exhibit W.W. 8/1 dated 30th December, 1970 W.W. 8/2 dated 12th January, 1971 W.W. 8/3 dated 4th January, 1971 W.W. 8/4 dated 19th December, 1970 letter written to the management by Shri Bhim Sain, President, Dalmia Dadri Cement Factory Men's Union, Charkhi Dadri W.W. 7/1 accompanied by the E. S. I. slips dated 24th January, 1971 and 29th January 1971 the report of the Document Expert Shri Kashayap Exhibit W.W. 6/1, photographic enlargements Exhibit W.W. 6/2 to W.W. 6/4 and negatives thereof Exhibit W.W. 6/5.

He has also relied upon the disputed entry in the Attendance and payment register Exhibit W. W. 6/6.

On the other hand, the management has examined two witnesses, namely, Mrs. R. K. Vij Handwriting and Finger Print Expert Delhi M. W. 1 and Shri B. N. Sood, Chief Chemist of the Company M. W. 2 besides tendering into evidence the copies of the letters received from Shri Suresh Chander workman concerned Exhibit M. 1 dated 11th December, 1970 Exhibit M. 2 dated 19th December, 1970, Exhibit M-3 dated 30th December, 1970 Exhibit M. 4 dated 4th January, 1971 Exhibit M. 5 dated 12th January, 1971, copy of the letter written to him by the management on 13th January, 1971 Exhibit M. 6 and copy of the Certified Standing orders of the Company Exhibit 7.

The case has been well argued on both sides and I have been taken through the entire evidence on record, oral as well as documentary, which I have fully considered.

As already pointed out, the case of the management is that this workman had lost the lien on his appointment on failure to return and report for duty within 8 days of the expiry of his leave granted from 14th November, 1970 to 25th November, 1970 as per clause 9(3) of the Standing Orders of the Company which reads as under.

“ If the workman remains absent beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave and (b) explains to the satisfaction of the Manager his inability to return before the expiry of his leave. In case, the workman loses his lien on his appointment, he shall be entitled to be kept on the “Badli” list. ”

The learned representative of the management has vehemently argued that in a case like this, the question of the termination of the workman by the management does not arise as on the happening mentioned in the above provisions of the standing orders by which the workman is governed his services stood automatically terminated without any action on the part of the management. On the other side, the plea of the workman is that, as a matter of fact, his condition had become worse after the expiry of the leave granted to him till 25th November, 1970 and he had sent verbal information and submitted letters for the extension of his leave supported with E. S. I. Medical Certificates as required under the rules and the practice prevailing in the establishment, and his absence from duty, which was beyond his control due to his continued illness and of which he had given timely intimation to the management, was excusable and as such could not result into the loss of lien on his appointment and the management had no justification whatever in terminating his services by removing his name from the muster roll or otherwise.

Now the question that arises for determination in case is as to which of the above contention is true and has been established in the case from the evidence brought on record.

After a close scrutiny of the evidence produced by the parties, oral as well as documentary and the contentions raised on both sides, I am of the considered view that the plea of loss of lien on the appointment held by the present workman taken by the management in the case has not been sustained. There is no denying the fact that he had proceeded on the ground of his own illness from 14th November, 1970 to 25th November, 1970 which was duly sanctioned. He, however, continued to remain ill and was confined to bed for a period of more than two months and he had sent intimation of his illness to the management supported with E. S. I. Medical Slips. His own younger brother W. W. 2 had gone to the Laboratory where he had been working and informed the Laboratory Incharge as well as the Head Time Keeper about it. The statement of his brother finds support in the testimony of two witnesses Shri Ram Chander W. W. 3, another Tester in the Laboratory, and Shri Banwari Lal Peon in the Time Office W. W. 4 Shri Pat Ram Establishment Incharge W. W. 1 who had also his residence in the workers colony where Shri Suresh Chander workman concerned lived was aware of the continued illness of this workman. Shri Bhim Sain, President, Dalmia Dadri Cement Factory Men's union Charkhi Dadri W. W. 7 has sworn testimony to the fact that during the period of his illness he had met Shri Suresh Chander and had personally talked to Shri Pat Ram, Head Time Keeper and Shri Sood Laboratory Incharge about it. He has also referred to the letter dated 30th January, 1971 Exhibit W. W. 7/1 written by him Union to the management in this connection.

There is further cogent and convincing evidence on record to establish beyond any shadow of doubt that this workman had remained ill and was not fit to report for duty before 30th January, 1971. During those days there was no Doctor Incharge of the E. S. I. Dispensary and Doctor S. K. Chaudhry Medical Officer of the Civil Hospital, Charkhi Dadri attended to the patients in the E. S. I. Dispensary. He has come into the witness-box as W. W. 5 and fully supported the above version of the workman concerned. I do not find any reasonable ground to disbelieve his statement. He is a responsible and independent witness not shown to be interested in the workman

in any manner. According to him the E. S. I. Medical Slips produced in the case and referred to above had been issued under his signatures and he had treated the present workman during the period in question. My attention has been drawn to the statement of Shri B. N. Sood M. W. 2 who was the Chief Chemist in the Laboratory during the relevant period but had resigned in 1971 and again rejoined in December, 1973. He has no doubt stated that this workman had not reported for duty after the expiry of his leave from 14th November, 1971 to 25th November, 1971 and that none had come to him to ask for the extension of his leave. His statement, however, is not sufficient to rebut the over-whelming evidence adduced by the workman, oral as well as documentary, referred to above, to support his plea. In his cross examination, he has stated that a workman supplying for leave on E. S. I. Certificates used to show the certificates sometime to him and sometime to the Time Keeper and in both the cases he was treated as on leave. He has shown his ignorance about the E. S. I. Certificates issued to the present workman by the Medical Officer W. W. 5.

There is still another aspect of the case which deserves consideration here. Both the parties have relied upon the disputed entry in the Attendance and payment Register marked Exhibit W. W. 6/6. According to the workman, he had first been shown on sick leave after 25th November, 1971 but subsequently, this entry had been deliberately scord and he had been marked absent. Document Experts have been examined on both sides to prove the genuineness or otherwise of the disputed entry in the register. Shri Ashik Kashayap Document Expert examined on behalf of the workman as W. W. 6 has deposed that the original writing beneath the crosses in the disputed entry was "E. S. I. Leave" with the initials P. R. which in his opinion had been obliterated and made illegible by drawing first a scoring line over it and then writing crosses to conceal this writing. He has taken photographic enlargements of the disputed writings which have been proved as W. W. 6/2 to W. W. 6/4. On the other hand, the Document Expert examined by the management M. W. 1 has stated that there is no overwriting in the disputed entry in the register except for over-strokes by means of crosses and horizontal lines. According to her, there was no possibility of the words "E. S. I." having existed in the original disputed writing before the over-strokes were made and the word "Leave" was not legible.

A very close and careful examination of the disputed writing, however, gives a suggestion that it has not been made in routine and manifestly a rather clumsy attempt has been made to conceal some writing beneath the over-strokes. While the words "E. S. I. Leave" are not quite visible to the naked eye or under the photographic enlargements, the letter 'S' can certainly be detected which is indicative of the fact that this workman was first marked on leave but later on the management changed its mind and showed him absent which was against facts. In the context of the circumstances, discussed above and taking into consideration the entire evidence on record, oral as well as documentary, the management can not be believed to say that this workman had not fallen ill during the period in question and that he had not given intimation to the management regarding his illness and extension of sick leave.

The learned representative of the management has laid great emphasis on the point that after the expiry of his leave from 14th to 25th November, 1970 no regular leave application of this workman had been brought on record to suggest that he had asked for or the extension of the leave had been duly sanctioned by the management. He has referred me to 1969-I-LLJ-129 (Patna), 1969-I-LLJ-660 (Misur), 1967-II-LLJ-883 (Supreme Court), 1970-II-LLJ-550 (Madra) and 1973-I-LLJ-1961 in support of his contention. I have very carefully gone through the same and find that they are not applicable to the facts of the instant case. There is no dispute with regard to the proposition of law that if a certain workman does not report for duty after the expiry of leave granted to him or does not explain reasonably the cause of his absence within the period prescribed by the certified Standing Orders of the Company or any contract of service with his employer he would be deemed to have left service which would automatically result into the loss of lien on the appointment held by him. In the cases referred to above the claims put forward by the workman suffered from this defect. They had either not pleaded or not proved their illness or other reasons which precluded them from reporting for duty after the expiry of their leave or that the explanation given by them

in this behalf had not been accepted by the management. But that is not the case here. As I have already discussed, the present workman had sent intimation of his continued illness to the management and submitted E. S. I. Medical Certificates. According to the Chief Chemist Mr. B. N. Sood under whom he had been working a workman who submitted E. S. I. Medical Certificates to him or to the Time Keeper was treated as on leave which had actually been done in the present case. Nothing has been brought on record to indicate that the management had refused to believe the plea of illness and the genuineness of the E. S. I. Medical Certificates produced by his workman. The action of the management in showing him as on sick leave after 25th November, 1970 as already pointed out rather proves to the contrary. It can not, therefore, be said that the conduct of the workman had resulted into the automatic termination of his services.

The matter can be judged from another angle also. Even if it be assumed for the sake of argument that this workman did not send an application for the extension of leave on the prescribed form too strict and technical interpretation of the rules is not called for in the instant case when it has been abundantly proved from medical and other evidence that he had been actually ill and intimation had otherwise been sent to the management regarding his illness and for extension of further leave which he

required for his treatment and full recovery. It will not be out of place to mention here that the management also did not apply the relevant clause of the Standing Orders too strictly. Otherwise the name of the workman would have been struck off the rolls immediately on the expiry of the period of 8 days after his leave originally granted expired on 25th November, 1970. On the other hand, his name was kept on the rolls although he was marked absent till 11th December, 1970.

The last though not be least important fact on record which has also to be taken into mind while adjudicating upon the Present dispute is that this workman had put in service for about 13/14 years, having joined on 20th October, 1957, and there being nothing to indicate that his past record was bad it is not believable that he would take the risk of losing his job on account of unauthorised absence from duty. The management has been rather hard in throwing him out of job after such a long record of service and by ignoring the factum of his continuous illness of which it had due notice.

So, for the reasons discussed above, both the issues are decided in favour of the workman and against the management holding that he had actually fallen ill during the period in question and it was not a case of automatic termination of his services due to loss of lien on the appointment held by him.

That disposes of the entire case and the issue, the subject matter of the present reference, which, from the facts established and for the reasons given, is decided in favour of the workman holding that the termination of his services by the management is not justified and in order and, in the result, he is entitled to reinstatement with continuity of his previous service and full back wages. He is also entitled to Rs. 200 as costs of the present proceedings.

O. P. SHARMA,

Presiding Officer,  
Labour Court, Haryana, Rohtak.

Dated 16th August, 1974.

No. T/17, dated 20th August, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,  
Labour Court, Haryana, Rohtak.

No. 7980-4Lab-74/28328.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. Universal Trade Corporation, Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 8 of 1972

between

SHRI RAM KISHAN AND THE MANAGEMENT OF M/S. UNIVERSAL TRADE CORPORATION, 1-2 CHOWK, FARIDABAD

Present:

Shri Roshan Lal Sharma, for the workman.  
Shri R. C. Sharma, for the management.

AWARD

The management of M/s. Universal Trade Corporation, 1-2 Chowk, N.I.T., Faridabad terminated the services of its workman Shri Ram Kishan on 25th June, 1971 allegedly without any justification. Feeling aggrieved, he gave the demand notice on the same day whereupon conciliation proceedings were initiated which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer the Governor of Haryana, referred the dispute for adjudication to this court,—vide order No. ID/FD/123-A-71/347, dated 5th January, 1972, with the following term of the reference:—

“Whether the termination of services of Shri Ram Kishan was justified and in order? If not, to what relief is he entitled?”

The parties put in their respective pleadings. The management contested the claim of the workman on the ground that he had left service of his own accord and *inter alia* it was pleaded that the respondent Corporation was not an Industry nor had the demand, the subject matter of the present reference, been properly espoused and raised according to law. The workman controverted the above allegations of the management and reiterated his claim for reinstatement and payment of back dues contending that his services had been illegally terminated by the management without any rhyme or reason.

The pleadings of the parties gave rise to the following issues:—

- (1) Whether the respondent is not an Industry ?
- (2) Whether the workman himself left his job ?
- (3) If the above issues are found in favour of the workman whether the termination of services of Shri Ram Kishan was justified and in order ? If not, to what relief is he entitled ?
- (4) Whether the demand the subject matter of the present reference was first raised on the management and rejected by it ? If not, with what effect ?

The parties have been heard on preliminary issues Nos. 4 and 5. The workman concerned has made his own statement without examining any other witness nor has he produced any document. On behalf of the management Shri Mahesh Chander partner has come into the witness-box as M.W. 1 and reliance has been placed upon the demand notice Exhibit M. 1, letter of conciliation Exhibit M. 2 and report of the Conciliation Officer Exhibit M. 3 received with the covering letter Exhibit M. 4.

The case has been fully argued on both sides and I have given a very careful consideration to the material on record.

The law is well settled on the point. To constitute an industrial dispute as defined under section 2(j) of the Industrial Disputes Act, 1947, the demand has first to be raised on the management and rejected by it before taking up the matter for conciliation. I am supported in this view by the judgment of Hon'ble the Supreme Court in the Sindhu Resettlement Corporation case which has been followed in some cases by the Delhi High Court. According to the rule of law laid down in this case, the demand has to be raised directly on the management so as to give it reasonable time to accept or reject the same. This important requirement of the law has, however, not been satisfied in the instant case. According to the showing of the workman himself his services were terminated by the management on 25th September, 1971. The demand notice which forms part of the present reference and has been produced by the management also as Exhibit M. 1 alongwith the communication of the Conciliation Officer Exhibit M. 2 is of the same date. In other words, the workman had given the demand notice on the very day his services were terminated to the Conciliation Officer, whereupon the conciliation proceedings were initiated. According to the sworn testimony of Shri Mahesh Chander M.W. 1 no other demand, verbal or in writing, was received from the workman and for the first time the demand was received from the Conciliation Officer,—vide demand notice Exhibit M. 1 alongwith the communication Exhibit M. 2. The mere communication of the demand by the Conciliation Officer to the management is not sufficient to constitute an industrial dispute as had been clearly laid down in the case law cited above. Since conciliation proceedings had been initiated by the workman on the very day his services were terminated by the management it is obvious that he had not raised the demand direct on the management and given it reasonable time to accept or reject the same before taking up the matter for conciliation. The learned representative of the workman has not been able to satisfy me to the contrary. Issue No. 4 is, therefore, decided against the workman and it is held that the demand, the subject matter of the present reference, was not first raised on the management and rejected by it so as to constitute an industrial dispute within the meaning of the law.

#### Issue No. 5

With regard to this issue also the workman concerned has not led any evidence worth consideration. In spite of the specific objection raised in the written statement that the dispute had not been properly espoused no attempt had been made to meet this objection. The demand notice which forms part of the reference was given by Shri Roshan Lal Sharma describing himself as the Vice President of the General Engineering Mazdoor Union (Regd), Faridabad. No membership record of the Union or the proceedings book have been produced to show that the said Union had a representative capacity so far as the workmen of the respondent were concerned. There is no evidence that the union had taken any decision to raise the dispute on behalf of the present workmen or that Shri Roshan Lal had been given the necessary authority to take up his case. The withholding of this important evidence which was supposed to be in the possession of the Union represented by Shri Roshan Lal Sharma gives rise to an adverse inference that, if produced, that evidence would not have supported the case of the workman to successfully meet the objection raised on behalf of the management. Shri Roshan Lal has not made even his own statement and the statement of the workman concerned is also silent on this vital aspect of the case. In the absence of cogent and convincing evidence to the contrary it has to be held that the workman concerned has simply failed to prove that the present dispute had been properly espoused as required by law. The issue is accordingly decided against him.

In view of my above findings on the Preliminary issues Nos. 4 and 5, it is not necessary to go into the other issues involved in the case for the simple and obvious reason that the demand having not been espoused and raised in the prescribed manner no industrial dispute existed between the parties which could validly be referred for adjudication to this court. The award is made accordingly but without any order as to costs.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 2085, dated the 26th August, 1974

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 7811-4Lab-74/28330.— In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Sub-Divisional Engineer, P.W.D., B. & R. Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 70 of 1972

between

SHRI NAWAB KHAN WORKMAN AND THE MANAGEMENT OF M/S SUB-DIVISIONAL  
ENGINEER, P.W.D. (B & R), FARIDABAD

Present :

Shri Nawab Khan, workman concerned with Shri Roshan Lal Sharma.

Shri B. N. Ahuja, S.D.E. for the management.

#### AWARD

Shri Nawab Khan workman concerned was in the service of P.W.D. (B. & R.) Sub-Divisional, Faridabad. His services were allegedly terminated by the management on 15th September, 1971 without any reasonable ground. He raised a demand for reinstatement but without success. This gave rise to an industrial dispute.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, referred the dispute for adjudication to this Tribunal.—vide order No. ID/FD/72/40645, dated 23rd November, 1972, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 with the following terms of reference :—

Whether the termination of services of Shri Nawab Khan was justified and in order ? If not, to what relief is he entitled ?

The parties put in their pleadings. The workman reiterated his claim for reinstatement as earlier raised through the demand notice, dated 21st March, 1972 which forms part of the present reference. The management contested his claim on the ground that, as a matter of fact, he had been absconding and had not attended to his duties since 15th September, 1971 onwards as he had been served with charge sheet of misbehaviour towards his Sectional Officer, Shri Radhey Sham. It has further stated that his services had not yet been terminated and the management had no malafide intention against him. Some legal objections were also raised by the management and it was urged that the present dispute was not covered by the Industrial Disputes Act, 1947 and the reference was bad in law for non-joinder of the Executive Engineer P.W.D. (B&R) Construction Division, Faridabad who was a necessary party. The following issues arose for determination in the case.

- (1) Whether the present dispute is not covered by an Industrial Disputes Act, 1947 ? If so, with what effect ?
- (2) Whether the Executive Engineer, P.W.D. (B&R) Construction Division, Faridabad is a necessary party to the present reference ?

- (3) Whether the termination of services of Shri Nawab Khan was justified and in order? If not, to what relief is he entitled?

Shri B. N. Ahuja, Sub-Divisional Engineer, made his statement on 14th January, 1974 that the Executive Engineer P.W.D. (B&R) Construction Division, Faridabad was the appointing and dismissing authority and he exercised the entire administrative control over the department. It was further stated by him that the services of the present workman Shri Nawab Khan had not yet been terminated, he was in fact absenting himself from duty from 15th September, 1971 onwards without any proper authorisation and had not reported for duty in spite of notice.

In view of the above statement made on behalf of the management, the parties have arrived at an amicable settlement. Shri Nawab Khan has withdrawn the present dispute and the management has agreed to take up his case departmentally and take him back on duty on the same basic pay and other terms and conditions of service as before by the 15th of August, 1974. It has further been agreed that the intervening period will be treated as leave without pay and his previous dues for the period before the termination of his services, earned wages, wages for earned leave etc. if any due, will be paid to him in due course. Statements of Shri B. N. Ahuja Sub-Divisional Engineer No. 1 on behalf of the management and of Shri Nawab Khan the workman concerned have been recorded with regard to the above settlement arrived at between the parties.

In view of the settlement arrived at between the parties as stated above, it is not necessary to go into the merits of the case and the issues involved. The management shall take up the case of the workman concerned departmentally and he shall be taken back on duty by 15th of August, 1974. The intervening period shall be treated as leave without pay but it would count towards the continuity of his service in the department. He will also be paid his dues, earned wages, wages in lieu of earned leave etc. for the period before the termination of his services, if any, in due course. The award is made accordingly. There shall be no order as to costs.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Dated the 16th August, 1974.

No. 752, dated the 19th August, 1974.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Dated the 16th August, 1974

No. 7813-4Lab-74/28332.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Kobe Suspension Co., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 63 of 1971

between

SHRI RAM NATH, WORKMAN AND THE MANAGEMENT OF M/S KOBE SUSPENSION  
CO., SECTOR-6, FARIDABAD

Present :

Shri Onkar Parshad, for the workman.

Shri R. C. Sharma, for the management.

#### AWARD

The following dispute between the management of M/s Kobe Suspension Co., Sector-6, Faridabad and its workman Shri Ram Nath was referred for adjudication to this Tribunal by order No. ID/FD/764/13502, dated 18th May, 1974 of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 19 of the Industrial Disputes Act, 1947.

"Whether the termination of services of Shri Ram Nath was justified and in order? If not, to what relief is he entitled?"



Usual notices were given to the parties. It was stated on behalf of the workman that the demand notice which forms part of the reference be treated as his statement of claim and no further plea is to be raised by him. On the other hand, the management has pleaded settlement of the dispute and as per the statement of the authorised representative Shri R. C. Sharma, this workman had approached the management for the settlement of account,—vide his application, dated 7th April, 1974 Ex. M-1. He has further deposed that after checking the account a sum of Rs. 415.67 found due was paid to him, in full and final settlement of his entire claim against the management including the right of reinstatement or re-employment against voucher Exhibit M-2 which is signed by him.

On the above statement made on behalf of the management, the authorised representative of the workman was given the time to verify the fact of the alleged settlement from the workman and in case the same was not admitted to produce him in person so that his statement might be recorded. The Workman has not appeared to deny the above settlement and his authorised representative has stated that he has no instructions from him to refute the same.

In view of the above plea of full and final settlement raised on behalf of the management has to be believed and that being so no further proceedings are called for in the case as the workman concerned is not entitled to any other relief by way of reinstatement or payment of back dues. The award is made accordingly but without any order as to costs.

Dated the 16th August, 1974.

O. P. SHARMA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 754, dated the 19th August, 1974

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 16th August, 1974.

O. P. SHARMA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 7837-4Lab-74/28334.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Northern India Finance Co., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 149 of 1972

between

SHRI TIRKHA RAM NAD THE MANAGEMENT OF M/S NORTHERN INDIA FINANCE COMPANY, MATHURA ROAD, FARIDABAD

Present

Shri Roshan Lal Sharma, for the workman.

Shri D. C. Bhardwaj, for the management.

AWARD

Shri Tirkha Ram workman concerned was in the service of M/s Northern India Finance Company, Mathura Road, Faridabad as a Pattern Maker since 1st December, 1969. The management allegedly terminated his services on 17th June, 1971 without any reasonable ground. Feeling aggrieved, he gave the demand notice, dated 31st December, 1971, whereupon conciliation proceedings were initiated which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947

ferred the above dispute for adjudication to this court, — vide order No. 1D/ED/72/14799-803, dated 11th April, 1972, with the following term of reference :—

“Whether the termination of services of Shri Tirkha Ram was justified and in order ? If not, to what relief is he entitled ?”

The parties were called upon to put in their respective written statements. The workman did not file any separate statement of claim. In the written statement put in on behalf of the management his claim was contested on the ground that, as a matter of fact, he had himself abandoned service by remaining absent from duty without proper authorisation and *inter alia* it was pleaded that no industrial dispute within the meaning of the law existed as the demand, the subject matter of the present dispute, was not first raised on the management and rejected by it before taking up the matter for conciliation. The authority of Shri Roshan Lal Sharma to raise the dispute on behalf of the workman was also challenged. In his replication the workman simply controverted the allegation of the management that he had absented himself from duty. According to him, he was not supplied the necessary tools and was turned out of the factory on 31st December, 1971 after he had worked for half the day which compelled him to approach the union.

From the pleadings of the parties, the following issues arose for determination in the case :—

1. Whether the dispute, the subject matter of the present reference had first been raised on the management direct and rejected by it before taking up the matter for conciliation ?
2. Whether Shri Roshan Lal Sharma who describing himself as Vice-President of the General Engineering Mazdoor Union (Regd.), Faridabad was not competent to give the demand notice leading to the present reference ?
3. Whether Shri Tirkha Ram concerned workman had himself abandoned service ?
4. Whether the termination of services of Shri Tirkha Ram was justified and in order ? If not, to what relief is he entitled ?

The management has examined two witnesses, namely, Shri D. N. Dhand, Assistant in the Personnel Department M.W. 1 and Shri V. P. Diwan, Factory Manager, M. W. 2. Reliance has also been placed upon documentary evidence consisting of copies of letters dated 3rd January, 1972 Ex. M. W. 1/1, dated 17th January, 1972 Exhibit M. W. 1/2, registered cover Ex. M. W. 1/3, copy of letter dated 29th December, 1971 Ex. M. W. 1/4 and the original letter dated 29th December, 1971 Ex. M. W. 1/5. An extract from the relevant clause of the Certified Standing Orders Ex. M. W. 1/6 has also been placed on record. According to the depositions made by M. Ws. 1 and 2, Shri Tirkha Ram the workman concerned had absented himself from duty without proper authorisation w.e.f. 1st January, 1972 and in spite of letters written to him he had failed to report for duty. M. W. 1 Shri D. N. Dhand has further that, as a matter of fact, this workman had started his own independent business and was not interested in his job in the factory.

On the other hand, Shri Tirkha Ram has made his own statement as W.W.1 without examining any other witness. It has been stated that on 13th June, 1971 he had received a message that his father had been taken ill and, therefore, he had proceeded to this village after handing over leave application to the Foreman for 15th June, 1971, 14th June, 1971 being his rest day. His father had expired on the same day and he, therefore, returned on 15th June, 1971 and submitted another leave application Ex. W. 1 for two days which was handed over by him to Shri R. C. Sharma, a worker in the factory, who returned the same to him on 17th June, 1971 with his endorsement on its back Ex. W. 2 to the effect that the Foreman had returned the application. He has further stated that he waited in the office when he was given the suspension order Ex. W. 3 and Shri Mukhtiar Singh was appointed Enquiry Officer, but no enquiry was held by him. According to him, a settlement had been brought about between the parties through the good offices of Shri M. K. Jain, Deputy Labour Commissioner, Haryana, Chandigarh and in accordance with this settlement he had reported for duty on 30th December, 1971. But after he had worked for half the day on 31st December, 1971 in the Rolling Department, he was neither supplied with the necessary tools nor was he allowed to work. In cross-examination while admitting his signatures on the receipt dated 28th March, 1972 Ex. MX. He has denied the receipt of the letter, dated 29th December, 1971 Ex. M. W. 1/6 and the letter, dated 3rd January, 1972 Ex. MY.

The case has been fully argued on both sides and I have given a careful consideration to the material on record. As would be clear from the facts discussed above, the present workman had not reported for duty on 15th June, 1971 and 16th June, 1971 and his leave application Ex. W. 1 had not less been sanctioned by the management. He was placed under suspension, — vide letter dated 17th June, 1971, Ex. W. 3 produced by him. But later on some settlement was brought about between the parties and the management had written to him the letter Ex. M. W. 1/5 on 29th December, 1971 asking him to report for duty on 30th December, 1971. Strangely enough, he has denied his signatures on this letter which was delivered to him on the same day although according to his own showing he had reported for duty on 30th December, 1971, as required in this letter, and also on the following day when he was not allowed to work in the afternoon nor was he supplied with the necessary tools to work in the Rolling Department.

On the other hand, the case for the management is that, as a matter of fact, he had absented himself from duty from 1st January, 1972 onwards and inspite of the letter written to him on 3rd January, 1972 he had not reported for duty and his name was, therefore, struck off the rolls, after waiting for 10 days, in accordance with the Certified Standing Orders of the Company, relevant extract whereof has been brought on record as Ex M W. 1/6. The workman concerned has not been able to give satisfactory explanation of his absence from duty without proper permission from 1st January, 1972 onwards. His services stood automatically terminated by virtue of the said provisions of the Certified Standing Orders which reads as under :—

“If a workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless (a) He returns within 10 days of the commencement of the absence or the expiry of the leave, (b) explains to the satisfaction of the Manager the reasons of his absence or his inability to return on the expiry of the leave as the case may be.”

In the circumstances, it can not said that his services had been terminated by the management. Infact, he had lost his lien on the appointment by remaining absent from duty continuously for 10 days without any proper authorisation which was not due to any act on the part of the management, but on account of his own conduct as discussed above.

That disposes of issue No. 3 arising out of the plea of self abandonment of services by the workman taken by the management in the written statement as well as issue No. 4 the subject matter of the present reference which for the reasons aforesaid are decided against the workman and in favour of the management.

The preliminary objection covered by issues Nos. 1 and 2 are also not without force. The law is very well settled on the point. To constitute an industrial dispute, according to the rule of law laid down by the Hon'ble the Supreme Court in the *Sindhi Re-settlement Corporation* case the demand has to be first raised on the management and rejected by it before taking up the matter for conciliation which has clearly not been done in the instant case. In spite of the specific plea raised in the written statement in this behalf not a word has been said by the workman concerned that after the termination of his services he had approached the management verbally or in writing with his demand for reinstatement and the same was rejected. My attention has been drawn to the demand notice dated 31st December, 1971 which forms part of the present reference. There is nothing on the record to show that this demand notice was given to the management. The statement of the workman concerned is silent on this point. Apparently, it is a copy of the demand notice sent to the Conciliation Officer which he had submitted to the Government alongwith his failure report. Even if it is be assumed for the sake of argument that the Conciliation Officer had sent a copy of the said demand notice to the management, the mere communication of this demand by the Conciliation Officer to the management is not sufficient to constitute an industrial dispute according to the rule of law laid down in the aforesaid authority which has been followed by the Delhi High Court in same cases. So, in the absence of proof to the contrary, I am of the considered view that the demand had not been properly raised in the instant case to constitute an industrial dispute which could validly be referred for adjudication to this court.

The management had raised still another objection with regard to the validity of the present dispute. The demand notice dated 31st December, 1971 was given by Shri Roshan Lal Sharma describing himself as the Vice President of the General Engineering Mazdoor Union (Regd.), Faridabad. The management had questioned his authority to do so in the written statement in clear and unambiguous words. Not an iota of evidence has been led in the case to prove that Shri Roshan Lal Sharma had the necessary authority to raise the dispute on behalf of the present workman, so much so that he could not even have the courage to come into the witness-box to make his own statement on oath and stand the test of cross-examination by the opposite party. No record of the Union or any other document has been produced nor any letter of authority by the workman concerned in his favour to meet the above objection of the management. The with-holding of the material evidence on the point which was supposed to be in the possession of the workman or his representative Shri Roshan Lal Sharma given rise to an adverse presumption against him that, if produced, it would not have supported the case of the workman. No reasonable explanation has been afforded for the non-production of this important evidence. It has, therefore, to be held that Shri Roshan Lal Sharma was not competent to raise the present dispute on behalf of Shri Tirkha Ram, workman concerned. Issues Nos. 1 and 2 are accordingly decided against the workman and in favour of the management.

No other point worth consideration has been urged and taking into consideration the facts discussed and may findings on the issue involved, the workman is not entitled to any relief by way of reinstatement or payment of back dues, the reference itself being bad in law on account of the self abandonment of service by the workman concerned and for want of any industrial dispute within the meaning of the law. The award is made accordingly but without any order as to costs.

Dated the 22nd August, 1974.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rontak.

No. 2076, dated 26th August, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak

No. 7836-4 Lab-74/28336.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Municipal Committee, Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 142 of 1972

between

SHRI KHAZAN AND THE MANAGEMENT OF MUNICIPAL COMMITTEE, FARIDABAD

Present :—

Nemo for the workmen.

Nemo for the management

#### AWARD

By order No. ID/FD/206-D-71/11911-15, dated 10th April, 1972, of the Governor of Haryana, the following dispute between the Municipal Committee, Faridabad and its workman Shri Khazan was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947.

“Whether the termination of services of Shri Khazan was justified and in order? If not, to what relief is he entitled?”

Usual notices were given to the parties to put in their written statement which has not been done. The workman concerned has not filed any statement of claim and service of the respondent Committee has not been effected.

As a matter of fact, the Municipal Committee, Faridabad as such had ceased to exist on the formation of the Faridabad Complex Administration with effect from 15th January, 1972, —vide Government notification No. 6761-ICI-72/35099, dated 16th November, 1972 published in the State Gazette. The present reference was made after the formation of the Faridabad Complex Administration against the Municipal Committee Faridabad which was no longer in existence. The reference is, therefore, bad in law cannot proceed in the present form especially, when the workman concerned is not coming forward to pursue his claim.

The reference shall, in the result, stand rejected. The workman may proceed against the Faridabad Complex Administration in the prescribed manner, if so advised. In the circumstances, there shall be no order as to costs.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

Dated the 21st August, 1974.

No. 2075, dated the 26th August, 1974

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.